

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

SECTION 407 PROCEEDING

Docket No.
IM2018-1

COMMENTS OF THE UNITED STATES POSTAL SERVICE
(July 3, 2018)

The United States Postal Service ("Postal Service") respectfully submits Comments in response to Order No. 4567 soliciting public comment in anticipation of the Commission's submission of its views to the Department of State under 39 U.S.C. § 407(c)(1), in response to the request of the Secretary of State dated March 27, 2018.

I. THE SCOPE OF THE COMMISSION'S JURISDICTION UNDER SECTION 407(c)(1) AND THE SECRETARY OF STATE'S REQUEST.

Section 407(c)(1) of Title 39 provides, "[b]efore concluding any treaty, convention, or amendment that establishes a rate or classification for a [market-dominant postal product], the Secretary of State shall request the Postal Regulatory Commission to submit its views on whether such rate or classification is consistent with the standards and criteria established by the Commission under Section 3622."

Pursuant to Section 407(c)(1), on March 27, 2018, the Secretary of State asked the Commission to "provide its views on the consistency of proposals to amend rates or classifications for market dominant products or services within the Universal Postal Convention that will be considered at the upcoming Extraordinary Universal Postal

Union (UPU) Congress [(the ‘Extraordinary UPU Congress’)] with the standards and criteria established by the Commission under 39 U.S.C. § 3622.”

On April 5, in accordance with its rules, 39 C.F.R. § 3017.3,¹ the Commission issued Order No. 4567 through which it established the instant docket to solicit comments to guide the Commission’s development of its views on the matters set forth in the Secretary of State’s request. The Commission set a deadline of July 3 for any comments.

For purposes of 39 U.S.C. § 407(c)(1) and the request of the Secretary of State dated March 27, the Commission has jurisdiction to review only a proposal that is to be considered at the upcoming Extraordinary UPU Congress, would create or amend an international law agreement (i.e., amend the UPU Acts), and would establish “a rate or classification for” a market-dominant postal product. Anything else is beyond the scope of the Commission’s authority under 39 U.S.C. § 407(c)(1) and the pending request of the Secretary of State pursuant to that statute.

The Commission’s own rules recognize its limited authority under Section 407(c)(1). Rule 3017.1 defines “views” to mean “the opinion the Commission provides to the Secretary of State pursuant to 39 U.S.C. 407(c)(1) on the consistency with modern rate regulation of a proposed treaty, convention, or amendment that establishes a market dominant rate or classification.” Under Rule 3017.3(b) (emphasis added), the Commission more broadly does permit comments in the docket to encompass “matters related to **development** of the Commission's views, such as the availability of relevant proposals, Commission views, other documents, or related actions.” Nevertheless,

¹ The Commission adopted procedural rules, 39 C.F.R. Part 3017, to govern this type of proceeding. Docket No. RM2015-14, Order No. 2960, Order Adopting Final Rules on Procedures Related to Commission Views, December 30, 2015.

ultimately the resulting “views” are limited to the Commission’s opinions “on the consistency with modern rate regulation of a proposed treaty, convention, or amendment that establishes a market dominant rate or classification,” not the Commission’s opinions on the broader matters that may have helped inform it in the “development” of those views.

Further, in expressing its views in this docket, the Commission does not supplant the role of the State Department, which retains the “primary authority for the conduct of foreign policy with respect to international postal services and international delivery services, including the determination of United States positions[.]”² For purposes of this docket, the statute authorizes the Commission to express its views only on whether proposed market-dominant rates or classifications are “consistent with the standards and criteria established by the Commission under Section 3622.”³ Section 3622 expressly authorizes the Commission “by regulation [to] establish ... a modern system for regulating rates and classes for market-dominant products.”⁴ The Commission has exercised this rulemaking authority to adopt regulations to implement Section 3622. For example, such regulations are found in Parts 3010 and 3020 of the Code of Federal Regulations. Part 3010 pertains to rate regulation of market-dominant products,⁵ and Part 3020 pertains to product classification.⁶ Through such regulations, the

² 39 U.S.C. § 407(b)(2).

³ *Id.* at (c)(1).

⁴ *Id.* § 3622.

⁵ Part 3010 “implements provisions in 39 U.S.C. chapter 36, subchapter I establishing ratesetting policies and procedures for market dominant products.” 39 C.F.R. § 3010.2.

⁶ Part 3020 contains rules that “categorize postal products as either market dominant or competitive.” *Id.* § 3020.1(a).

Commission has classified certain inbound postal products as market-dominant⁷ and has established price cap limitations on market-dominant postal products.⁸

II. THE UPU'S MANDATORY TRACKED SERVICE PROPOSAL 20.18.1 IS CONSISTENT WITH THE COMMISSION'S MARKET DOMINANT REGULATORY STANDARDS AND CRITERIA.

On June 29,⁹ the Commission posted one proposal that fits within the scope of 39 U.S.C. § 407(c)(1) and the request of the Secretary of State dated March 27. That proposal is numbered 20.18.1. It is expected to be considered at the Extraordinary UPU Congress and would amend the Universal Postal Convention (Convention) if adopted. Currently under Article 18 of the Convention, member countries are permitted, but not required, to offer a supplemental tracked delivery service for letter post items. Proposal 20.18.1 would amend Article 18 of the Convention to require UPU member countries to offer tracked delivery service as a supplementary feature for letter post items.¹⁰

Proposal 20.18.1 is consistent with the Commission's regulatory standards and criteria for market dominant products under Section 3622. In today's world market, tracking has become an integral part of any complete product offering. Customers need and want to know where their items are, and they are willing to pay for tracking. This visibility further increases customer satisfaction and reduces customer inquiries, since

⁷ *Id.* § 3020.10 & Subpart A, App. A.

⁸ *See id.* § 3010.20 (capping rate adjustments within each class of market-dominant products using inflation-based formulas).

⁹ The Commission first posted proposal 20.18.1 on June 8 and posted an amended version on June 29.

¹⁰ Inbound Letter Post is a market dominant product, and a minor change may be needed to include tracked delivery service as a supplemental feature. See MCS 1130.5.

they can see the status of their items online, thereby creating the potential for reduction in congestion at call centers. The Commission should express as its view that UPU proposal 20.18.1 is consistent with the Commission's regulatory standards and criteria under 39 U.S.C. § 3622.

III. TERMINAL DUES UNDER THE 2016 UPU CONVENTION ARE BEYOND THE SCOPE OF SECTION 407(c) AND THE SECRETARY OF STATE'S REQUEST.

Several companies have submitted letters in this docket, but those letters are not germane here, in that they each explicitly criticize the "current UPU terminal dues" that were adopted by the UPU in 2016, rather than any proposals to change terminal dues at the UPU in 2018.¹¹ They also abstractly suggest the rejection of "any" proposal that would give "foreign" business entities a competitive advantage over U.S. businesses, but none of them points to any actual pending proposal that would even allegedly do so.¹²

The Commission has not posted any proposals to be considered at the 2018 Extraordinary UPU Congress to amend the UPU terminal dues system under the 2016 UPU Acts which were concluded by member countries in Istanbul. If such proposals

¹¹ See Letters of Dexas, Honey-Can-Do, Pretika, and Range Kleen, filed in Docket No. IM2018-1. These letters also express concerns over intellectual property infringement, but that is an issue that is also beyond the scope of Section 407(c)(1) and the Commission's system of regulating the U.S. Postal Service's market dominant postal products. Similarly, the letters from Representative Marchant, Frontiers of Freedom, and the SBE Council that have been filed in this docket are also beyond the scope of this proceeding. The Commission should not exceed the scope of Section 407(c)(1) and the request of the Secretary of State in expressing its views in this docket; in the alternative, if the Commission were to express any views on remuneration for inbound letter post, then in developing such views it should consider all comments that the Postal Service has previously filed with the Commission on the subject. See, e.g., Reply Comments of the United States Postal Service on Inbound Letter Post, PRC Docket No. ACR2017, February 27, 2018 (incorporated herein by reference).

¹² Those stakeholders also express their own opinions that the United States ought to consider leaving the UPU, and one of them (Letter of Honey-Can-Do, at 2) even explicitly "request[s] that the United States leave the UPU." That is a matter of foreign policy within the State Department's authority, and it is clearly beyond the scope of Section 407(c)(1) for the Commission's views.

were to be introduced, then they potentially could implicate Section 407(c)(1), particularly if they were to propose a change in future rates (terminal dues) for Inbound Letter Post. But Section 407(c)(1) and the Secretary of State's request dated March 27, 2018, do not concern the existing rates under the terminal dues system adopted in the UPU Acts in 2016. Section 407(c)(1) authorizes the solicitation and expression of the Commission's views only "[b]efore" the United States Government concludes any new international agreements or amendments, not after the fact.¹³ Consistent with the statute's limited scope, the request of the Secretary of State of March 27 is expressly limited to proposals to amend the "Convention that will be considered at the upcoming Extraordinary Universal Postal Union (UPU) Congress."

In the absence of any pending proposals to establish or amend terminal dues at the Extraordinary UPU Congress, Section 407(c)(1) and the Secretary of State's request do not authorize any "views" of the Commission on terminal dues. If new proposals are subsequently introduced to establish or amend terminal dues at the Extraordinary UPU Congress, then the Commission could seek comment on such proposals at that time to help it develop and express its views consistent with Section 407(c)(1). In any event, Section 407(c)(1) and the Secretary of State's request would still not authorize views on the 2016 UPU Acts, including the terminal dues adopted in

¹³ Some stakeholders have questioned whether the United States needs, or ought, to formally "approve" (such as ratification as one example of formal "approval") the 2016 UPU Convention in accord with U.S. domestic law and UPU Constitution Article 25.4. Nevertheless, those issues are irrelevant to this proceeding, because the United States did, in fact, sign the UPU Acts in 2016 in Istanbul and "concluded" the Convention. The legal significance of having concluded the Convention without a subsequent formal act of "approval" does not affect this proceeding. There is no question that Section 407(c)(1) authorizes the State Department to seek the views of the Commission only *in advance* of the conclusion of treaties, conventions, and their amendments, regardless of their subsequent approvals. One letter (from SBE Council at 2) claims, without citation, that there has been some unspecified "likely violation of law" in applying the 2016 UPU Acts and the terminal dues thereunder; the Postal Service disagrees that there have been any violations of law, but the Commission should not even entertain such allegations in this docket, as they are clearly beyond its scope.

2016 in Istanbul.

Further, the Commission did in fact have the opportunity to express its advance views on the terminal dues proposals for the 2016 UPU Istanbul Congress in the Commission's Docket No. IM2016-1. As part of that docket, the Commission reviewed five proposals on terminal dues (rates for Inbound Letter Post), but, because the Commission lacked a majority view, the Commission formally concluded that it was "unable to determine whether" those proposals were consistent with the Commission's standards and criteria for market dominant regulation.¹⁴

¹⁴ Notice of Posting of Views, Docket No. IM2016-1, Oct. 7, 2016 (quoting Letter of PRC to Department of State (Aug. 31, 2016) at 5).

Conclusion

For the foregoing reasons, the Commission should opine as its “view” that UPU proposal 20.18.1 is consistent with the Commission’s standards and criteria under 39 U.S.C. § 3622. In this docket, the Commission should refrain from opining on issues that are beyond the scope of 39 U.S.C. § 407(c)(1), and beyond the scope of the request of the Secretary of State dated March 27, 2018 pursuant to 39 U.S.C. § 407(c)(1).

Respectfully submitted,

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